

Attorney Docket No.: 02CON377P  
Serial No.: 09/627,375

### REMARKS

This Amendment and Response is in response to the Non-Final Office Action, dated April 22, 2004, where the Examiner has rejected claims 1-3, 7, 9-11, 28-30 and 35-37. By the present amendment, applicant has cancelled claims 9-11 and 35-37, amended claims 1, 3, 28 and 30, and added new claims 38-39. After the present amendment, claims 1-3, 7, 28-30 and 38-39 are pending in the present application. Reconsideration and allowance of pending claims 1-3, 7, 28-30 and 38-39 in view of the following amendments and remarks are respectfully requested.

**A. Rejection of Claims 1-3, 7, 9-11, 28-30 and 35-37 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 1-3, 7, 9-11, 28-30 and 35-37 under 35 U.S.C. § 103(a), as being unpatentable over Smolik et al. (USPN 6,501,736) in view of Bender et al. (USPN 6,002,933), and further in view of Tiedemann, et al. (USPN 6,335,922) ("Tiedemann").

Applicant appreciates the Examiner's time for the courteous interview conducted on July 20, 2004, to discuss the present application.

Applicant respectfully submits that the cited references fail to disclose, teach or suggest the invention of claim 1, because claim 1, as amended, recites: "and wherein if the network cannot accommodate a service demand by one of the plurality of users, the target average data rates associated with the standard class and the economy class are reduced to accommodate the service demand and the target average data rate associated with the premium class is maintained."

As discussed with the Examiner, claim 1, as amended, is patentable over the cited references, at least for two reasons. First, none of the cited references discloses, teaches or suggests that if the network cannot accommodate a service demand, the standard class and

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economy class users are affected, but ~~not~~ the premium class users. Second, none of the cited references discloses, teaches or suggests that "the target average data rates" is reduced for the standard class and economy class users if the network cannot accommodate a service demand. As discussed with the Examiner, according to claim 1, it is the target average data rate, and not the data rate that is reduced for the standard and economy classes. As recited in claim 1, the target average data rate is used by the "rate implementation module", which is configured to select between the plurality of output rates for coding outgoing frames of the signals to achieve an average output rate for the outgoing frames, as determined over a predetermined time period, wherein the average output rate is approximately equal to the target average data rate.

Further, as the Examiner has acknowledged, Smolik fails to come close to the above-recited limitation of claim 1, and Bender merely discloses  $R_{avg}$ , which is indicative of the average frame reception rate of good frames. This average frame reception rate is not relevant to the above-recited element of claim 1, because, in claim 1, the average output rate is determined by encoder (transmitter), further, the average output rate is not based good or bad frames, and also the average output rate is not compared to determine whether it is approximately equal to the target average data rate.

Accordingly, applicant respectfully submits that claim 1 and its dependent claims 2-3 and 7 should be allowed. Further, independent method claim 28 includes limitations similar to those of claim 1, and thus, claim 28 and its dependent claims 28-30 should also be allowed.

**B. New Claims 38-39**

By the present amendment, applicant has added new claims 38-39. Claim 38 depends from claim 1 and recites that relative percentages of the plurality of output rates are adjusted to

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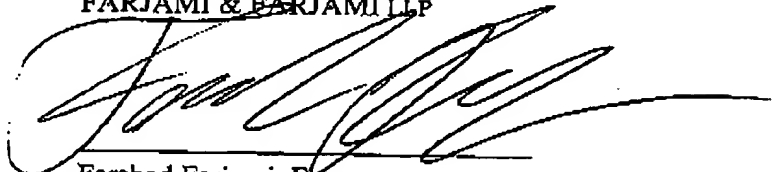
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achieve the average output rate that is approximately equal to the target average data rate. Claim 38 further clarifies that in one embodiment the "average" output rate is achieved by adjusting the relative percentages of the plurality of output rates. Applicant respectfully submits that claim 38 is patentably distinguishable over the cited references at least for the same reasons stated above in conjunction with patentability of claim 1. Further, claim 39 depends from claim 28 and includes limitations similar to those of claim 38. Accordingly, claim 39 is patentably distinguishable over the cited references at least for the same reasons stated above in conjunction with patentability of claim 28.

C. Conclusion

For all the foregoing reasons, an early allowance of claims 1-3, 7, 28-30 and 38-39 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;  
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